

WEIGHTS AND MEASURES

55-422. Petroleum products inspection law; definitions. K.S.A. 55-422 through 55-445, and amendments thereto, may be cited as the petroleum products inspection law. As used in the petroleum products inspection law: (a) "Director" means the director of taxation of the Kansas department of revenue, or the director's duly authorized deputy, agent, or representative.

(b) "Secretary" means the secretary of agriculture or the secretary's authorized representative.

(c) "Person" means an individual, firm, association, organization, partnership, business trust, joint stock company, company, corporation, or other legal entity.

(d) "Motor fuel" means any refined or blended motor fuel products, including gasoline, diesel fuel, aviation fuel, oxygenated fuel, or any other fuel used for generation of power in an internal combustion engine as specified by the secretary by rules and regulations adopted under the petroleum products inspection law.

(e) "Petroleum product" includes gasoline, kerosene, motor-fuels and such other products as defined by rules and regulations adopted pursuant to the petroleum products inspection law.

(f) The terms "manufacturer", "distributor" and "importer" shall have the meanings ascribed to them in the motor-fuel tax law.

55-423. Standards for petroleum products established by the secretary. No person shall sell, offer for sale, have in such person's possession, use or deliver any petroleum products for consumption or use for illuminating, heating or power purposes in this state until the same meets the standards or characteristics for those products as established pursuant to rules and regulations adopted by the secretary.

55-424. Duties of secretary; entry upon premises; samples collected; stop-sale order. (a) The secretary may examine and test the quality of such petroleum products sold, offered for sale, used or delivered by any manufacturer, importer, or distributor in this state.

(b) The secretary shall have access during business hours to enter all places where petroleum products are manufactured, stored, sold or offered for sale or resale for the purpose of examination, inspection, sampling or investigation of such petroleum products. Neither the secretary nor any authorized representative of the secretary shall be required to obtain a search warrant in order to perform any duty imposed by this section.

(c) The secretary may collect or cause to be collected any samples of petroleum products and test or cause such samples to be tested or analyzed for compliance with the provisions of this act or any rules and regulations adopted thereunder.

(d) Whenever the secretary finds any violation of this act or any rule and regulation adopted under this act has occurred, the secretary may issue a stop-sale order, removal order or any combination of such orders with respect to any petroleum product being manufactured, held, offered, or exposed for sale, sold or delivered if the secretary deems it necessary for the protection of the public.

(e) No person may sell, use, remove, otherwise dispose of, or fail to remove from the premises any petroleum product contrary to the terms of any order issued pursuant to this section.

55-425. Standards for tests; test methods and equipment. (a) Whenever possible, in making any test pursuant to this act, the secretary shall use methods and equipment similar to those methods and equipment adopted by the American society for testing materials. Such methods of testing shall be prescribed by rules and regulations. Methods of testing in existence prior to the effective date of the act shall continue until changed by rules and regulations adopted pursuant to the provisions of this act.

(b) The secretary is hereby authorized to enter into contracts for the testing of petroleum products pursuant to the provisions of this act.

(c) The secretary is authorized to adopt, by rules and regulations, any additional methods of testing petroleum products and standards setting forth specifications, tolerances and other technical requirements for the equipment used in performing such tests. In establishing rules and regulations pursuant to this subsection, the secretary shall conform to the standards of the American society for testing materials whenever possible. Specifications, tolerances and other technical requirements for the testing equipment in existence prior to the effective date of the act shall continue until changed by rules and regulations adopted pursuant to the provisions of this act.

55-426. Fees, amount; director of taxation, duties. The director of taxation is entitled to demand and receive from the manufacturer, importer, exporter or distributor first selling, offering for sale, using or delivering gasoline or diesel including government sales, the sum of \$.015 per barrel (50 gallons to be considered and counted as a barrel).

55-427. Monthly report of sales and payment of fees; interest and penalty when delinquent; petroleum inspection fee fund.

(a) Every manufacturer, importer, or distributor of any of the above-named petroleum products subject to inspection and liable for the payment of fees as provided in the petroleum products inspection law, shall report in full and detail before the 25th day of every month at the office of the director of taxation, on blanks prepared, furnished and approved by the director of taxation, the quantity of each of the above-named petroleum products sold in the state of Kansas during the preceding calendar month, and shall, at the time of forwarding such report, compute and pay to the director of taxation at the director's office, the amount of fees due the state on all petroleum products subject to inspection during the preceding month.

(b) All fees imposed under the provisions of the petroleum products inspection law and not paid on or before the 25th day of the month succeeding the calendar month in which such petroleum products were sold or offered for sale shall be deemed delinquent and shall bear interest at the rate of 1% a month, or fraction thereof, from such due date until paid. In addition, there is hereby imposed upon all amounts of such fees remaining due and unpaid after such due date a penalty in the amount of 5%. Such penalty shall be added to and collected as part of the fees by the director of taxation. The fees, including penalty and interest shall be remitted by the director of taxation to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and credit the same in accordance with subsections (c) and (d).

(c) There is hereby created in the state treasury the petroleum inspection fee fund which shall be administered by the secretary of agriculture. All moneys credited to the petroleum inspection fee fund shall be used for the expenses incurred for the performance of the duties and functions of the secretary of agriculture and the Kansas department of agriculture prescribed by K.S.A. 55-422 through 55-446, and amendments thereto, and K.S.A. 83-501, and amendments thereto, or any rules and regulations adopted thereunder, relating to the regulation of the quality of petroleum products, and for the expenses incurred for the performance of the duties and functions of the secretary of agriculture and the Kansas department of agriculture prescribed by K.S.A. 83-401 through 83-410, and amendments thereto, or any rules and regulations adopted thereunder, and K.S.A. 83-501, and amendments thereto, or any rules and regulations adopted thereunder, relating to the regulation of motor fuel dispensing devices, as defined by K.S.A. 83-401, and amendments thereto. All expenditures from the petroleum inspection fee fund shall be made in accordance with the provisions of appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of agriculture or by a person or persons designated by the secretary.

(d) All moneys received for the fee imposed by K.S.A. 55-426, and amendments thereto, or for interest or penalties imposed by K.S.A. 55-427, and amendments thereto, shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and such moneys shall be credited in accordance with the following:

(1) On and after July 1 of each fiscal year, 2/3 of each such deposit shall be credited to the state general fund and the balance of each such deposit shall be credited to the petroleum inspection fee fund until the aggregate of all amounts credited to the state general fund under this subsection (d)(1) equals \$250,000; and

(2) after \$250,000 has been credited to the state general fund under subsection (d)(1) for any fiscal year, the entire amount of each amount deposited thereafter for such fiscal year shall be credited to the petroleum inspection fee fund.

55-434. Penalties. (a) Any person who violates any of the provisions of the petroleum products inspection law or any rule or regulation adopted thereunder shall be guilty of a class A nonperson misdemeanor. Each separate violation shall constitute a separate offense.

(b) Any violation of the provisions of the petroleum products inspection law shall be deemed a deceptive act and practice as defined by K.S.A. 50-626, and amendments thereto. Violations of the petroleum products inspection law may be enforced by the secretary of agriculture under the administrative provisions of the petroleum products inspection law, by the attorney general or the county or district attorney under the Kansas consumer protection act.

55-435. Invalidity of part. If any part, or parts, of this act are held to be unconstitutional, the remaining part thereof shall be unaffected, and it shall be presumed that the legislature would have enacted this law with the part held to be invalid, omitted.

55-436. Administration and enforcement; jurisdiction of secretary of agriculture over inspections. The secretary of agriculture shall administer the law with reference to a thorough and practical inspection as required by law covering inspection of petroleum products used in lighting and heating, and in the operation or propulsion of motor vehicles, including inspection of pumps and measures used in dispensing the same.

55-437. Same; transfer of powers, duties and functions. (a) All of the powers, duties and functions of the director of taxation with regard to the petroleum products inspection law pertaining to the actual inspection of the products specified in K.S.A. 55-423, and amendments thereto, are hereby transferred to and conferred and imposed upon the secretary of agriculture.

(b) The secretary of agriculture shall be the successor in every way to the powers, duties and functions of the director of taxation with regard to the petroleum products inspection law pertaining to the actual inspection of the products specified in K.S.A. 55-423, and amendments thereto, in which the same were vested prior to the effective date of this act. Every act performed in the exercise of such powers, duties and functions by or under the authority of the secretary of agriculture shall be deemed to have the same force and effect as if performed by the director of taxation with regard to the petroleum products inspection law in which such powers, duties and functions were vested prior to the effective date of this order.

(c) Whenever the director of taxation, or words of like effect, with regard to the petroleum products inspection law pertaining to the actual inspection of the products specified in K.S.A. 55-423, and amendments thereto, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the secretary of agriculture.

(d) All rules and regulations of the director of taxation with regard to the petroleum products inspection law pertaining to the actual inspection of the products specified in K.S.A. 55-423, and amendments thereto, in existence on the effective date of this act shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the secretary of agriculture until revised, amended, revoked or nullified pursuant to law.

(e) All orders and directives of the director of taxation with regard to the petroleum products inspection law pertaining to the actual inspection of the products specified in K.S.A. 55-423, and amendments thereto, in existence on the effective date of this act

shall continue to be effective and shall be deemed the orders and directives of the secretary of agriculture until revised, amended or nullified pursuant to law.

(f) The secretary of agriculture shall succeed to whatever right, title or interest the director of taxation, with regard to the petroleum products inspection law pertaining to the actual inspection of the products specified in K.S.A. 55-423, and amendments thereto, has acquired in any real property in this state, and the secretary shall hold the same for and in the name of the state of Kansas.

(g) On and after the effective date of this act whenever any statute, contract, deed or other document concerns the power or authority of the director of taxation with regard to the petroleum products inspection law pertaining to the actual inspection of the products specified in K.S.A. 55-423, and amendments thereto, to acquire, hold or dispose of real property or any interest therein, the secretary of agriculture shall succeed to such power or authority.

55-438. Same; transfer of officers and employees; retention of benefits and rights; service deemed continuous. On the effective date of this act, officers and employees who, immediately prior to such date, were engaged in the performance of powers, duties or functions of the petroleum products inspection law pertaining to the actual inspection of the products specified in K.S.A. 55-423, and amendments thereto, and who, in the opinion of the secretary of agriculture, are necessary to perform the powers, duties and functions of the petroleum products inspection law pertaining to the actual inspection of the products specified in K.S.A. 55-423, and amendments thereto, shall be transferred to, and shall become officers and employees of the state department of agriculture. Any such officer or employee shall retain all retirement benefits and all rights of civil service which had accrued to or vested in such officer or employee prior to the effective date of this act. The service of each such officer and employee so transferred shall be deemed to have been continuous.

55-439. Same; resolution of conflicts by governor; succession to property and records. (a) When any conflict arises as to the disposition of any property, power, duty or function or the unexpended balance of any appropriation as a result of any abolition, transfer, attachment or change made by or under authority of this act, such conflict shall be resolved by the governor, whose decision shall be final.

(b) The Kansas state department of agriculture shall succeed to all property, property rights and records which were used for or pertain to the performance of the powers, duties and functions transferred to the secretary of agriculture. Any conflict as to the proper disposition of property or records arising under this section, and resulting from the transfer, attachment or all or part of the powers, duties and functions of the director of taxation, shall be determined by the governor, whose decision shall be final.

55-440. Same; civil and criminal actions saved. (a) No suit, action or other proceeding, judicial or administrative, lawfully commenced, or which could have been commenced, by or against the director of taxation with regard to the petroleum products inspection law or by or against any officer of the state in such officer's official capacity or in relation to the discharge of such officer's official duties, shall abate by reason of the transfers effected under the provisions of this act. The court may allow any such suit, action or other proceeding to be maintained by or against the secretary of agriculture or any officer affected.

55-441. Same; transfer of appropriations; assumption of liability for compensation of transferred officers and employees.

(a) On the effective date of this act, the balance of all funds appropriated and reappropriated to the director of taxation with regard to the petroleum products inspection law is hereby transferred to the department of agriculture and shall be used only for the purpose for which the appropriation was originally made.

(b) On the effective date of this act, the liability for all accrued compensation or salaries of officers and employees who, immediately prior to such date, were engaged in the performance of powers, duties or functions of any state agency or officer transferred by this act, or which becomes a part of the department of agriculture or the powers, duties and functions of which are transferred to the secretary of agriculture, shall be assumed and paid by the department of agriculture.

55-442. Rules and regulations. (a) The secretary of agriculture may adopt rules and regulations establishing standards for and identity of any petroleum product. These rules and regulations shall conform, insofar as practicable, to the American society for testing materials standards for those products and the rules and regulations and clean air act waivers of the United States environmental protection agency.

(b) The secretary of agriculture may adopt rules and regulations establishing methods of testing any petroleum product. These rules and regulations shall conform, insofar as practicable, to the methods for testing those petroleum products as established by the American society for testing materials.

(c) The secretary of agriculture may adopt rules and regulations establishing specifications, tolerances and other technical requirements for equipment used for the testing those petroleum products as established by the American society for testing materials.

(d) The secretary of agriculture may adopt rules and regulations concerning labeling of petroleum products and standards of identity for petroleum products. These rules and regulations shall conform, insofar as practicable, to the standards of identity for petroleum products as established by the American society for testing materials and to federal regulations regarding labeling whenever possible.

(e) The secretary of agriculture may adopt rules and regulations designating additional products as petroleum products.

(f) The secretary of agriculture may adopt any other rules and regulations deemed necessary for the administration of the petroleum products inspection law.

55-443. Penalties; appeal procedure. (a) It is a violation for any person to:

- (1) Act as or represent such person's self to be a technical representative without having a valid license issued by the Kansas department of agriculture;
- (2) hinder or obstruct in any way the secretary or any of the secretary's authorized agents in the performance of the secretary's official duties under the petroleum products inspection law;
- (3) failure to follow the applicable version of NIST Handbook as referenced in chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any rules and regulations adopted thereunder when installing, repairing, calibrating or testing a device;
- (4) failure to complete the testing or placing-in-service report in its entirety and to report the accurate description of the parts replaced, adjusted, reconditioned or work performed;
- (5) filing a false or fraudulent application or report to the secretary;
- (6) failure to pay all fees and penalties as prescribed by the petroleum products inspection law and the rules and regulations adopted and promulgated pursuant to the petroleum products inspection law;
- (7) refuse to keep and make available for examination by the department of agriculture all books, papers, and other information necessary for the enforcement of the petroleum products inspection law or chapter 83 of the Kansas Statutes Annotated, and amendments thereto;
- (8) failure to have any commercial dispensing device tested as required by the petroleum products inspection law or chapter 83 of the Kansas Statutes Annotated, and amendments thereto;
- (9) sell, offer or expose for sale any petroleum product which does not comply with the provisions of the petroleum products inspection law;
- (10) sell, use, remove, otherwise dispose of or fail to remove from the premises specified, any dispensing device, package or commodity contrary to the terms of any order issued by the secretary; and
- (11) violate any order issued by the secretary pursuant to chapter 83 of the Kansas Statutes Annotated, and amendments thereto.

(b) Any person who violates any provision of the petroleum products inspection law or any applicable provisions of chapter 83 of the Kansas Statutes Annotated, or amendments thereto, or any rules and regulations adopted thereunder, in addition to any other penalty provided by law, may incur a civil penalty imposed under subsection (c) in an amount, fixed by rules and regulations of the secretary, of not less than \$100 nor more than \$5,000 for each such violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(c) In determining the amount of the civil penalty, the following shall be taken into consideration:

- (1) The extent of harm caused by the violation;
- (2) the nature and persistence of the violation;
- (3) the length of time over which the violation occurs;
- (4) any corrective actions taken; and
- (5) any and all relevant circumstances.

(d) All civil penalties assessed shall be due and payable within 10 days after written notice of assessment is served on the person, unless a longer period of time is granted by the secretary. If a civil penalty is not paid within the applicable time period, the secretary may file a certified copy of the notice of assessment with the clerk of the district court in the county where the weighing and measuring device or dispensing device is located. The notice of assessment shall be enforced in the same manner as a judgment of the district court.

(e) No civil penalty shall be imposed pursuant to this section except upon the written order of the duly authorized agent of the secretary to the person who committed the violation or to the person whose agent or employee committed the violation. Such order shall state the violation, the penalty to be imposed and the right of the person to appeal to the secretary. Any such person, within 20 days after notification, may make written request to the secretary for a hearing in accordance with the provisions of the Kansas administrative procedure act. The secretary shall affirm, reverse or modify the order and shall specify the reasons therefor.

(f) Any person aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the act for judicial review and civil enforcement of agency actions.

(g) An appeal to the district court or to an appellate court shall not stay the payment of the civil penalty.

(h) Any civil penalty recovered pursuant to the provisions of this section or any penalty recovered under the consumer protection act for violations of this section, and amendments thereto, or any rules and regulations adopted thereunder, shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the weights and measures fee fund.

(i) This section shall be part of and supplemental to the petroleum products inspection act, article 4 of chapter 55 of the Kansas Statutes Annotated, and amendments thereto.

55-444. Secretary's rights. Nothing in this act shall limit the right of the secretary to proceed as authorized by any other provision of law.

55-445. Injunction, restraining order. The secretary may bring an action in the district court for injunction or other process to restrain or prevent a violation of the petroleum products inspection law. Such injunction or other process shall issue without any bond being required.

55-447. Servicing or repairing a dispensing device; exceptions. Except as provided in K.S.A. 83-401 through 83-410, and amendments thereto, nothing in article 4 of chapter 55 of the Kansas Statutes Annotated, and amendments thereto, shall prohibit the owner of a dispensing device or the owner's employee or agent, from servicing or repairing such device. However, if such device is found out of tolerance and is rejected by the Kansas department of agriculture, the owner is responsible for repairing the device within the time specified on the rejection tag and notifying the department when the device is repaired and in operation. The owner shall pay a fee commensurate with the expense incurred by the secretary in performing the follow-up inspection or test.

Chapter 83.--WEIGHTS AND MEASURES

Article 1.--AUTHORIZED STANDARDS AND ENFORCEMENT PROVISIONS

83-139. Sale of grain, seed, hay or coal; penalty for fraudulent practices; authority of agent, proof. Every sale of grain, seed, hay or coal shall be deemed to be made on the basis of the actual weight thereof, unless a different basis is established by the express agreement of the parties to the transaction. Any purchaser of grain, seed, hay or coal who, without express agreement with the seller thereof, shall knowingly deduct any quantity or amount from the actual weight or measure of the article purchased, and withhold payment therefor under claim of right so to do by reason of any custom, rule of a board of trade or any other pretense whatsoever, shall be deemed guilty of a misdemeanor, and subject to a fine of not less than twenty-five dollars nor more than one hundred dollars for each and every offense. No agent or broker selling grain, seed, hay or coal for the owner thereof shall be presumed to have authority to sell any grain, seed, hay or coal on a basis other than that of the actual weight or quantity thereof, but express authority to allow any deduction must be proved.

83-140. Same; civil liability for deduction from actual weight or measure; attorney's fees. In case any purchaser of grain, seed, hay or coal shall deduct any amount from the actual weight or measure thereof, and shall knowingly withhold from the seller the purchase price of the quantity so deducted without the express agreement of the seller thereof, such seller may recover from such purchaser three times the amount so withheld, together with reasonable attorney's fees, to be taxed in each court in which the action may be brought or to which an appeal may be taken.

83-143. Liquefied petroleum gas; unlawful acts. It shall be unlawful to sell at retail or offer for sale at retail any liquefied petroleum gas except by avoirdupois weight, specified in pounds or kilograms; liquid measure, specified in gallons or liters; or vapor, specified in cubic feet, cubic meters or such other units as may be approved by the secretary of agriculture.

83-144. Same; labeling of packages and containers. When liquefied petroleum gas is sold at retail or offered for sale at retail by weight, in packages or containers, the tare weight of the container, and the net weight of the contents shall be plainly and conspicuously marked on the outside of the container or on a label firmly attached thereto. Tare weight shall not be construed to include the valve protecting cap, which shall be removed when weighing.

83-145. Liquefied petroleum gas; weighing and measuring devices; testing; unlawful acts. (a) The secretary of agriculture, or the secretary's authorized representative, is authorized to test all weighing and measuring devices used in the retail sale of liquefied petroleum gas, and shall reject all such devices which are found to be inaccurate and to not clearly indicate the quantity of liquefied petroleum gas in kilograms or pounds, liters or gallons, cubic feet or cubic meters or other unit approved by the secretary of agriculture, or the secretary's authorized representative. The secretary of agriculture, or the secretary's authorized representative, shall conspicuously mark all rejected devices. Such mark shall not be removed or defaced except upon authorization of the secretary of agriculture or the secretary's authorized representatives. It shall be unlawful to use a vapor meter dial which is not equipped with a cubic foot indicator for testing the accuracy of the meter.

(b) It shall be unlawful to use a liquid meter for measuring the volume, in gallons, of liquefied petroleum gas for retail sale from delivery vehicles unless such meter is equipped with a ticket printer for use in issuance of printed tickets showing the volume, in gallons, of the liquefied petroleum gas delivered.

83-146. Same; purchaser's invoice; ticket. An invoice shall be submitted to the purchaser showing the quantity of liquefied petroleum gas sold, expressed in pounds, or gallons, or cubic feet, or other units approved by the secretary of agriculture. When vapor meters reading in approved units other than cubic feet are used, the invoice shall clearly indicate to the purchaser a factor to convert to cubic feet or gallons. When liquefied petroleum gas is sold at retail by liquid volume from a delivery vehicle, a ticket issued by a liquid meter shall be used to show the quantity delivered in gallons; and the printed ticket shall clearly indicate to the purchaser the gallons of liquefied petroleum gas sold and delivered.

83-148. Liquefied petroleum gas; purchaser's credit for refilled or exchanged container, exceptions. Except as otherwise provided, when liquefied petroleum gas is sold by the container, either by a refilling of a container or an exchange of containers, the vendor shall give the purchaser full credit for the unused liquid remaining in a container being exchanged or refilled. The provisions of this section shall not apply to an exchange of containers when the exchanged container is delivered to the vendor by the purchaser.

83-149. Same; penalties. Any person who violates any of the provisions of article 1 of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any of the rules and regulations issued hereunder, shall be deemed guilty of a class A, nonperson misdemeanor.

83-154. Falsely making or altering scale ticket or other written records; penalty. Every person who, with intent to defraud, shall falsely make or alter or cause or procure to be falsely made or altered any scale ticket or other written record evidencing or relating to the weight of any personal property or who shall, with intent to defraud, falsely make or alter or cause or procure to be falsely made or altered any entry or item on any such scale ticket or written record, upon conviction thereof, shall be deemed guilty of a class A, nonperson misdemeanor.

83-155. Scale ticket or written record relating to weights; requirements; penalties for violations. It shall be unlawful for any person who shall for hire weigh any vehicle at an attended public scale to issue any scale ticket or other written record evidencing or relating to the weight of such vehicle or the load thereon unless such scale ticket or written record shall show the following: (a) The date and time of the weighing; (b) the place of the weighing; and (c) the signature of the weigher. Any person violating any of the provisions of this section shall be guilty of a class A, nonperson misdemeanor.

Article 2.--STANDARDS AND ENFORCEMENT

83-201. Definitions. As used in article 2 of chapter 83 of the Kansas Statutes Annotated and K.S.A. 83-502, and amendments thereto: (a) "Weights and measures" means all commercial weights or measures of every kind, instruments and devices for weighing and measuring, and any appliance and accessories associated with any or all such instruments and devices and any point-of-sale system.

(b) "Weight" as used in connection with any commodity means net weight, except if the label declares that the product is sold by drained weight, the term means net drained weight.

(c) "Correct" as used in connection with weights and measures means conformance to all applicable tolerances, specifications and requirements as established by the secretary and those established within article 2 of chapter 83 of Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder.

(d) "Primary standards" means the physical standards of the state which serve as the legal reference from which all other standards and weights and measures are derived.

(e) "Secondary standards" means the physical standards which are traceable to the primary standards through comparisons, using acceptable laboratory procedures, and used in the enforcement of weights and measures laws and rules and regulations.

(f) "Person" means an individual, agent or employee of a service company, partnerships, corporations, companies, societies and associations.

(g) "Sale from bulk" means the sale of commodities when the quantity is determined at the time of sale.

(h) "Package" means any commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale.

(i) "Drained weight" means the weight of the solid or semisolid product representing the contents of a package or container obtained after a prescribed method for excluding the liquid has been employed.

(j) "Secretary" means the secretary of agriculture or the secretary's authorized representative.

(k) "Measuring device" includes all weights, scales, beams, measures of every kind, instruments and mechanical devices for weighing or measuring, and any appliances and accessories connected with any or all such instruments.

(l) "Point-of-sale system" means any combination of a cash register or other devices, or system, such as a scanner, capable of recovering stored information related to the price or computing the price of any individual item which is sold or offered for sale at retail. A point-of-sale system may also include or be attached or connected to a weighing or measuring device.

(m) "Scanner" means any electronic system that employs a laser-bar code reader to retrieve product identity, price or other information stored in a computer memory.

(n) "Service company" means a company which is in the business of examining, calibrating, testing, repairing and adjusting weighing and measuring devices but such term does not include a technical representative unless the technical representative is the owner of such service company.

(o) "Technical representative" means an individual who installs, repairs, adjusts or calibrates the weighing and measuring devices and certifies the accuracy of the weighing and measuring devices.

83-202. Recognized system of weights and measures. (a) Except as provided further:

(1) The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems shall be used for all commercial purposes in the state.

(2) The following standards and requirements shall apply to commercial weighing and measuring devices:

(A) "The standards of the national conference on weights and measures" published in the national institute of standards and technology handbook 44 entitled specifications, tolerances, and other technical requirements for weighing and measuring devices as published on October, 1994 or later versions as established in rules and regulations adopted by the secretary, except a mechanical vehicle scale used solely to sell aggregated products shall be allowed a minimum tolerance of \pm 100 pounds. Such scale shall not be sold or moved to another location for use in commercial applications unless it complies with all applicable tolerances of the national institute of standards and technology handbook 44 entitled specifications, tolerances, and other technical

requirements for weighing and measuring devices as published in October, 1994 or later versions as established in rules and regulations adopted by the secretary. This exception shall be in effect until June 30, 2011;

(B) "the uniform laws and regulations of the national conference on weights and measures" published in the national institute of standards and technology handbook 130 regarding packaging and labeling, the method of sale of commodities, national type evaluation regulation, motor fuel inspection and motor fuel regulation, as published on December, 1994 or later versions as established in rules and regulations adopted by the secretary;

(C) "checking the net contents of packaged goods" published in the national institute of standards and technology handbook 133, third edition, as published on September, 1988 or later versions as established in rules and regulations adopted by the secretary;

(D) "checking the net contents of packaged goods" published in the national institute of standards and technology handbook 133, third edition, supplement 4, as published on October, 1994 or later versions as established in rules and regulations adopted by the secretary; and

(E) any other handbooks or sections thereof as adopted by the secretary by rules and regulations.

(b) Whenever there exists an inconsistency between the provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, and any of the handbooks adopted by reference, the requirements of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, shall control.

83-203. State primary standards of weights and measures; secondary standards. Weights and measures that are traceable to the United States prototype standards supplied by the federal government, or approved as being satisfactory by the national institute of standards and technology, shall be the state primary standards of weights and measures and shall be maintained in such calibration as prescribed by the national institute of standards and technology. All secondary standards may be prescribed by the secretary and shall be verified upon their initial receipt and as often thereafter as deemed necessary by the secretary.

83-204. Contracts, sales or purchases construed in terms of standards of weights and measures adopted under act. All contracts, sales or purchases made for work to be done, or for anything to be sold or delivered or done by weight or measure within this state shall be taken and construed in terms of and according to the standards of weights and measures adopted under this act, except where parties have agreed upon any other calculations or measurement. All statements and representations of any kind referring to the weights or measures of commodities sold or purchased, or exposed for sale, shall be understood in terms of the standards of weights and measures adopted under this act.

83-205. Weights and measures inspection program; personnel; functions. (a) There is hereby established in the Kansas department of agriculture a weights and measures inspection program to enforce the provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder. The program shall be under the supervision of the secretary, and the secretary shall employ an administrator of the program and appoint such personnel as may be necessary for the proper administration of chapter 83 of the Kansas Statutes Annotated, and amendments thereto. The administrator shall be in the unclassified service of the Kansas civil service act.

(b) The weights and measures inspection program shall perform the following functions:

(1) Assure that weights and measures in commercial service within the state are suitable for their intended use, properly installed, accurate and are so maintained by their owner or user;

(2) prevent unfair or deceptive dealing by weight or measure in any commodity or service advertised, packaged, sold or purchased within this state;

(3) make available to all users of physical standards or weighing and measuring equipment the precision calibration and related metrological certification capabilities of the weights and measures facilities of the department of agriculture;

(4) promote uniformity, to the extent such conformance is practicable and desirable, between weights and measures requirements of this state and those of other states and federal agencies;

(5) encourage desirable economic growth while protecting the consumer through the adoption by rule and regulation of weights and measures requirements as necessary to assure equity among buyers and sellers; and

(6) such other functions as may be specified by law or deemed necessary by the secretary to carry out the duties and functions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder.

83-206. Same; powers and duties of secretary of agriculture. In the administration of the weights and measures inspection program, the secretary shall: (a) Administer and enforce the provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder.

(b) Conduct investigations to ensure compliance with chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder.

(c) Delegate to appropriate individuals or private or public entities any of these responsibilities for the proper administration of chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder.

(d) Test annually the standards of weight and measure used by any city or county within the state, and approve the same when found to be correct.

(e) Inspect and test weights and measures kept, offered or exposed for sale.

(f) Inspect and test, to ascertain if they are correct, weights and measures and point-of-sale systems commercially used:

(1) In determining the weight, measure or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure or count;

(2) in computing the basic charge or payment for services rendered on the basis of weight, measure or count; or

(3) in recovering stored information related to the price of any item or commodity which is sold or offered for sale at retail.

(g) Approve for use, and may mark, such weights and measures and point-of-sale systems as the secretary finds to be correct, and reject and mark as rejected such weights and measures and point-of-sale systems as the secretary finds to be incorrect. Weights and measures and point-of-sale systems that have been rejected may be seized if not corrected within the time specified by the secretary or if used or disposed of in a manner not specifically authorized. The secretary shall reject and may seize the weights and measures and point-of-sale systems found to be incorrect that are not capable of being made correct.

(h) Weigh, measure or inspect packaged commodities kept, offered or exposed for sale, sold, or in the process of delivery, to determine whether they contain the amounts represented and whether they are kept, offered or exposed for sale in accordance with chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or rules and regulations promulgated pursuant thereto. In carrying out the provisions of this section, the secretary shall employ recognized sampling procedures by incorporating applicable procedures designated in the national institute of standards and technology handbooks.

(i) Allow reasonable variations from the stated quantity of contents, which shall include those caused by loss or gain of moisture during the course of good distribution practice.

(j) Perform such other duties as may be necessary to carry out the provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder, or as may be otherwise authorized by law.

(k) Be authorized to enter into such contracts and agreements with individuals or private or public entities as may be necessary, in the judgment of the secretary, to fulfill the duties and responsibilities established in chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder. Any contract entered into by the secretary pursuant to this section shall not be subject to K.S.A. 75-3739, or amendments thereto.

83-207. Same; rules and regulations. The secretary of agriculture may adopt rules and regulations necessary for the administration and enforcement of the provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto. As a part of such rules and regulations, the secretary of agriculture shall adopt standards setting forth specifications, tolerances and other technical requirements for all weights, measures and weighing and measuring devices, and point-of-sale systems. These specifications, tolerances and other technical requirements shall conform, insofar as practicable, to the specifications, tolerances and other technical requirements for weights, measures and weighing and measuring devices established by the national institute of standards and technology. The secretary of agriculture shall prescribe by rules and regulations the appropriate term or unit of weight or measure to be used whenever the secretary determines in the case of a specific commodity that an existing practice of declaring the quantity by weight, measure, numerical count, or combination thereof, does not facilitate value comparisons by consumers, or that such practice offers an opportunity for consumer confusion.

83-208. Inspections; prohibited acts; penalty for violation. The secretary, or an authorized representative of the secretary, may enter any premises or vehicle in or on which any weights, measures, balances or measuring devices may be located or used for the purposes of trade, for the purpose of inspecting, testing and sealing or rejecting the same. Whoever hinders, obstructs, or in any way interferes with the secretary or an authorized representative of the secretary, while in the performance of the inspection, or whoever fails to produce, upon demand by such secretary or authorized representative, all weights, measures, balances or measuring devices in or upon the premises or vehicle of such person or in the possession of such person for use in manufacture or trade, shall be deemed guilty of a class A, nonperson misdemeanor.

83-209. Enforcement; orders of secretary. (a) If the secretary finds that any package or amount of any commodity is held, offered or exposed for sale in violation of law, the secretary may order them off-sale and may mark or tag them to show they are illegal.

(b) Whenever the secretary finds that any violation of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any rules and regulations adopted under it has occurred, the secretary may issue a stop-use order, stop-sale order, stop-removal order or removal order or any combination of such orders with respect to weights and measures being, or capable of being, commercially used. The secretary may issue stop-sale orders, stop-removal orders or removal orders, or any combination of such orders, with respect to any package or amount of any commodity held, offered or exposed for sale, sold or being delivered if the secretary deems it necessary for the protection of the public.

(c) No person may sell, use, remove, otherwise dispose of, or fail to remove from the premises specified, any weight, measure or package or any amount of any commodity contrary to the terms of any order issued under this section.

(d) This section does not limit the right of the secretary to proceed as authorized by other sections of chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder.

83-210. County or city enforcement; powers and duties of officials. (a) Any county or city in the state may establish a department of public inspection of weights and measures, appoint inspectors of weights and measures and fix their compensation and pass such ordinances relating to weights and measures not in conflict with the state laws as may be deemed necessary. If a county or city establishes such a department it shall provide the department with suitable quarters, a set of secondary standards and all other equipment for the proper performance of duties. All county and city standards shall be tried, proved and sealed under the direction of the secretary, and shall be returned to the secretary for verification at least once in every year.

(b) Any weights and measures official appointed for a county or city shall have the duties enumerated in subsections (e) to (h), inclusive, of K.S.A. 83-206, and amendments thereto, and the powers enumerated in K.S.A. 83-208 and 83-209, and amendments thereto. These powers and duties shall extend to their respective jurisdictions, except that the jurisdiction of a county official shall not extend to any city for which a weights and measures official has been appointed. Weights and measures officials appointed for a

county or city shall exercise such additional powers as may be granted by the governing body of such county or city, but such additional powers shall not be less than the powers granted to state inspectors of weights and measures under chapter 83 of the Kansas Statutes Annotated, and amendments thereto, and shall not be in conflict with powers granted to the secretary under chapter 83 of the Kansas Statutes Annotated, and amendments thereto.

(c) All departments of public inspection of weights and measures established by cities or counties prior to July 1, 1985, are hereby specifically continued in existence.

83-212. Bulk sales delivery ticket; contents. All bulk sales in which the buyer and seller are not both present to witness the measurement, all bulk deliveries of heating fuel and all other bulk sales specified by rules and regulations of the secretary of agriculture, shall be accompanied by a delivery ticket containing the following information: (a) The names and addresses of the buyer and seller;

(b) the date of delivery of the product or commodity;

(c) the quantity delivered and the quantity upon which the price is based, if this differs from the delivered quantity;

(d) the identity of the commodity or product being sold in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale;

(e) the count of individually wrapped packages, if more than one; and

(f) the unit price, unless otherwise agreed on by both the buyer and seller.

83-213. Labeling of packages; rules and regulations. (a) Except as otherwise provided in chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or by rules and regulations adopted pursuant thereto, any package kept for the purpose of sale or offered or exposed for sale shall bear on the outside of the package a definite, plain and conspicuous declaration of:

(1) The identity of the commodity in the package, unless the same can easily be identified through the wrapper or container;

(2) the quantity of contents in terms of weight, measure or count; and

(3) the name and place of business of the manufacturer, packer or distributor, in the case of any package kept, offered or exposed for sale, or sold in any place other than on the premises where packed.

(b) The secretary of agriculture may adopt rules and regulations which establish reasonable variations or tolerances, prescribe the size of printing of the labeling required and prescribe exemptions of small packages.

83-214. Testing and sealing on request; charge for services; weights and measures fee fund. (a) The secretary may try and prove weights, measures, balances and other measuring devices on request for any person, corporation or institution, and when the same are found or made to conform to the state standards, and otherwise fulfill such reasonable requirements as the secretary may make, the secretary, or an authorized representative of the secretary, may seal the same with a seal which is kept for that purpose.

(b) Except as otherwise provided by statute, the secretary, or the authorized representative of the secretary, may charge for services provided by the department and other necessary and incidental expenses or both incurred in conjunction with the testing and proving of weights, measures and other devices at a rate per hour or fraction thereof and other necessary and incidental expenses which are fixed by rules and regulations adopted by the secretary of agriculture, except that (1) the charges for services provided by the metrology lab shall not exceed \$50 per hour or fraction thereof, and (2) in the case of the head house scale program such charges shall not exceed \$100 per hour or fraction thereof. The secretary may charge for subsistence and transportation of personnel and equipment to such point and return. Such charges shall be set by rules and regulations adopted by the secretary of agriculture. The secretary may fix the manner in which any charges made pursuant to this subsection are collected.

(c) The secretary shall remit all moneys received under subsection (b) to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the weights and measures fee fund which is hereby created. All expenditures from the weights and measures fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or by a person designated by the secretary.

(d) Except as provided in K.S.A. 83-301 through 83-311, and amendments thereto, nothing in article 2 of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, shall prohibit the owner of a weighing or measuring device or the owner's employee or agent from servicing or repairing such device. However, if such device is found out of tolerance and is rejected by the department of agriculture, the owner is responsible for repairing the device within the time specified on the rejection tag and notifying the department when the device is repaired and in operation. The owner shall pay a fee commensurate with the expense incurred by the secretary in performing the follow-up inspections or tests.

83-215. Rejection of weighing or measuring device; repair or destruction of device. (a) The secretary is hereby authorized and empowered to reject any weighing or measuring device which is found not to conform to state standards or which is found not to weigh or measure within authorized tolerances.

(b) Service companies or any agent or employee thereof, shall be prohibited from condemning or taking a weighing or measuring device out of service.

(c) Any weighing or measuring device that has been rejected under authority of the secretary shall remain subject to the control of the secretary until such time as suitable and acceptable repair has been made of the same, or an authorized disposition of the same has been approved. An authorized repair period of use not longer than 30 days for purposes of obtaining a repair of the weighing or measuring device by the owner, or a reasonable extension of that period, may be given by the secretary when it is determined that the immediate cessation of use of such weighing or measuring device will work an undue hardship on the person using such device or the patrons of such person. The owner of such rejected weighing or measuring device shall cause the same to

be repaired and corrected to weigh or measure within authorized tolerances within 30 days after being rejected, or within such extension as may be authorized, or in lieu thereof, the owner of the same may dispose of or destroy such weighing or measuring device or any rejected weight or measure under specific authority from the secretary.

83-216. Same; devices declared to be common nuisance and contraband; action for disposal of device. (a) Any weight, measure or weighing or measuring device which has been rejected by the secretary and which has not been repaired or restored to weigh or measure within approved tolerances, during any authorized repair period, is hereby declared to be a common nuisance and a contraband device. The secretary may seal the beam or mechanism out of service on any weighing or measuring device, or may take possession of any contraband weight or measure. The secretary shall deliver to the owner or person found in possession of any contraband weight, measure or weighing or measuring device a statement giving the location and description of the weight, measure or weighing or measuring device so sealed or taken.

(b) Any weighing or measuring device which has been sealed out of service by the secretary and which has not been repaired or restored and made to weigh or measure within approved tolerances within 90 days following the date of sealing, or an authorized extension thereof, may be proceeded against by an action, instituted in Shawnee county district court or in the county where such weighing or measuring device is located, for an order for the disposal of such device.

(c) Procedure in regard to the prevention of the maintenance of a common nuisance and procedure for the disposal of any weighing or measuring device may be had in accordance with and in the manner provided for under K.S.A. 41-805 and 41-806, and amendments thereto, and as otherwise authorized by statute.

83-217. Damages owed by person using inaccurate, false or rejected device; variations in weight, measure or quantity. Any person who is liable to an injured person by reason of any inaccurate, false or rejected weighing or measuring device shall be assessed and adjudged to pay damages in double the amount of property wrongfully taken or not given, and in addition thereto, for punitive damages the additional sum of \$25, and reasonable attorney fees, to be recovered in any court of competent jurisdiction. The selling and delivery of a stated quantity of any commodity shall be prima facie evidence of representations on the part of the vendor that the quantity sold and delivered was the quantity bought by the vendee. A slight variation from the stated weight, measure or quantity, within authorized tolerances, is permissible for individually packaged commodities if such variation is as often over, as it is under, the correct weight, measure or quantity stated.

83-218. Presumptive proof of regular use of device. For the purposes of this act, proof of the existence of a weight, measure or a weighing or measuring device, in or about any building, enclosure, stand or vehicle in which or from which it is shown that buying or selling is commonly carried on, in the absence of conclusive evidence to the contrary, shall be presumptive proof of the regular use of such weight, measure or weighing or measuring device for commercial purposes and of such use by the person in charge of such building, enclosure, stand or vehicle

83-219. Unlawful acts. (a) It shall be unlawful for any person:

(1) To offer or expose for sale, or to sell or otherwise dispose of any weight, measure or weighing or measuring device that does not meet the tolerances and specifications required by chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or which has been rejected without first obtaining the written authorization of the secretary;

(2) to use or possess a weight, measure or weighing or measuring device that is used for or intended to be used for commercial purposes which does not meet the tolerance and specifications required by chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or that does not conform to the standard authorized by the secretary for determining the quantity of any commodity or article of merchandise, for the purpose of:

(A) Buying or selling any commodity or article of merchandise;

(B) computation of any charge for services rendered on the basis of weight or measure;

(C) determining weight or measure, either when a charge is made for such determination or where no charge is made for use of such weight, measure, weighing or measuring device;

(3) except as allowed in K.S.A. 83-225, and amendments thereto, to break or remove any tag, mark or seal placed on any weighing or measuring device by the secretary or a county or city inspector of weights and measures, without specific written authorization from the proper authority or to use a weighing or measuring device after the lapse of the authorized period following the placing of a rejection tag thereon by the secretary, unless further extension of time for any repair purposes is first obtained from the secretary;

(4) to sell, offer or expose for sale, less than the represented quantity of any commodity, thing or service;

(5) to take or attempt to take more of the represented quantity of any commodity, thing or service when the buyer furnishes the weight, measure or weighing or measuring device by which the amount of any commodity, thing or service is determined;

(6) to keep for the purpose of sale, or to offer or expose for sale, or to sell any commodity in a manner contrary to the law or contrary to any rule and regulation;

(7) to use in retail trade, except in preparation of packages of merchandise put up in advance of sale, a weighing or measuring device that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from a reasonable customer position;

(8) to violate any of the provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or rules and regulations adopted thereunder, for which a specific penalty is not provided;

(9) to sell or offer for sale, or use or possess for the purpose of selling or using any device or instrument to be used or calculated to falsify any weight or measure;

- (10) to dispose of any rejected weight or measure in a manner contrary to law or rules and regulations;
 - (11) to expose for sale, offer for sale or sell any commodity in package form, without it being so wrapped, or the container so made, formed or filled, that it will not mislead the purchaser as to the quantity of the contents of the package;
 - (12) to expose for sale, offer for sale or sell any commodity in any container where the contents of the container fall below such reasonable standard of fill as may have been prescribed for the commodity in question by the secretary;
 - (13) to misrepresent the price of any commodity or service sold, offered, exposed or advertised for sale by weight, measure or count, nor represent the price in any manner calculated or tending to mislead or in any way deceive any person;
 - (14) to misrepresent, or represent in a manner calculated or tending to mislead or deceive an actual or prospective purchaser, the price of an item offered, exposed or advertised for sale at retail;
 - (15) to compute or attempt to compute at the time of sale of an item, a value which is not a true extension of a price per unit which is then advertised, posted or quoted;
 - (16) to charge or attempt to charge, at the time of the sale of an item or commodity, a value which is more than the price which is advertised, posted or quoted;
 - (17) to alter a weight certificate, use or attempt to use any such certificate for any load or part of a load or for articles or things other than for which the certificate is given, or, after weighing and before the delivery of any articles or things so weighted, alter or diminish the quantity thereof;
 - (18) to hinder or obstruct in any way the secretary or any of the secretary's authorized agents in the performance of the secretary's official duties under chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder;
 - (19) to fail to follow the standards and requirements established in K.S.A. 83-202, and amendments thereto, or any rules and regulations adopted thereunder;
 - (20) to fail to pay all fees and penalties as prescribed by chapter 83 of the Kansas Statutes Annotated, and amendments thereto, and the rules and regulations adopted thereunder;
 - (21) to fail to keep or make available for examination or provide to the secretary all inspection reports, test reports and any other service reports or other information on any device owned or operated by the owner or any agent or employee of the owner and other information necessary for the enforcement of chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder, and as required by the secretary;
 - (22) to fail to have any commercial weight, measure or weighing and measuring device tested as required by chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder;
 - (23) to sell or offer or expose for sale liquefied petroleum gas in packages or containers which do not bear a statement as to tare and net weight as required by chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder, or packages or containers which bear a false statement as to weights;
 - (24) to sell, use, remove, or otherwise dispose of, or fail to remove from the premises specified, any weighing or measuring device or package or commodity contrary to the terms of any order issued by the secretary;
 - (25) to violate any order issued by the secretary pursuant to chapter 83 of the Kansas Statutes Annotated, and amendments thereto; and
 - (26) to prohibit a buyer or seller from observing the weighing or operation of any transaction to which such buyer or seller is a party.
- (b) It shall be unlawful for any service company or technical representative to:
- (1) Act as or represent such person's self to be a technical representative without having a valid license issued by the Kansas department of agriculture;
 - (2) certify a device as correct unless the device meets the tolerances and specifications as required by chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any rules and regulations adopted thereunder;
 - (3) hinder or obstruct in any way the secretary in the performance of the secretary's official duties under chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder;
 - (4) fail to follow the standards and requirements set forth in K.S.A. 83-202, and amendments thereto, or any rules and regulations adopted thereunder;
 - (5) fail to complete the testing or placing-in-service report in its entirety and to report the accurate description of the parts replaced, adjusted, reconditioned or work performed;
 - (6) file a false or fraudulent service company or technical representative application or reports to the secretary;
 - (7) fail to pay all fees and penalties as prescribed by chapter 83 of the Kansas Statutes Annotated, and amendments thereto, and the rules and regulations adopted thereunder;
 - (8) fail to keep or make available for examination in an accessible and legible manner or provide to the secretary in a legible manner all inspection reports, test reports, and any other service or report work information on any device which the service company or an agent or employee performed work on and other information necessary for the enforcement of chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder; or
 - (9) sell, offer or expose for sale a weighing or measuring device intended to be used commercially, which is not traceable to a national type evaluation program certificate of conformance.
- (c) For the purpose of paragraph (a)(4), the selling and delivery of a stated quantity of any commodity shall be prima facie evidence of representations on the part of the seller that the quantity sold and delivered was the quantity bought by the purchaser.
- (d) Violation of this section shall be deemed a deceptive act and practice as defined by K.S.A. 50-626, and amendments thereto. Violations of the provisions of K.S.A. 83-219, and amendments thereto, may be enforced by the secretary under the

administrative provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or by the attorney general or a county or district attorney under the Kansas consumer protection act.

83-220. Penalty for violations. Any person violating any of the provisions of article 2 of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or violating any rules and regulations adopted thereunder shall be guilty of a class A, a nonperson misdemeanor

83-221. Dispensing devices and vehicle tanks; inspections, tests, certifications. All inspections and tests to inspect, test and seal, certify or reject any dispensing device or the capacity of any vehicle tank used in the transportation of liquefied petroleum gas, motor-vehicle fuels or liquid fuels shall be made in compliance with the provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, and the rules and regulations promulgated thereunder.

83-222. Continuation of rules and regulations. Except as otherwise provided in article 2 of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, all rules and regulations adopted under the provisions of article 1 of chapter 83 of the Kansas Statutes Annotated in existence immediately prior to July 1, 1985, shall continue to be effective and shall be deemed to be the rules and regulations of the secretary of agriculture until revised, amended, repealed or nullified pursuant to law.

83-223. Action for injunction authorized to restrain or prevent violations. The secretary may bring action in the district court in the name of the state of Kansas for injunction or other process to restrain or prevent a violation of this act.

83-224. Severability. If any part or parts of this act are held to be invalid or unconstitutional by any court, it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional part or parts.

83-225. Scale; authorized removal of rejection tag or other mark. (a) A licensed service company shall be authorized to remove an official rejection tag or other mark placed on a scale by authority of the secretary for the purpose of testing or repairing any scale.

(b) After the test is conducted and necessary repairs are completed, the service company shall place the weighing and measuring device in service and shall notify the secretary of such within the time periods established by the secretary pursuant to rules and regulations adopted hereunder.

(c) When a scale cannot be repaired properly, the service company shall replace the rejection tag or other mark with a substitute rejection tag or other mark supplied by the department and shall notify the secretary within the time period as established by the secretary pursuant to rules and regulations adopted hereunder.

(d) This section shall apply to new and used scales.

(e) This section shall be supplemental to and part of the act appearing in article 2 of chapter 83 of Kansas Statutes Annotated. Administrative or civil penalties specified in K.S.A. 83-220, and amendments thereto, shall apply to violations of this section.

Article 3.--SCALES

83-301. Definitions. As used in K.S.A. 83-301 through 83-325, and amendments thereto: (a) "Weighing and measuring device" means any scales, liquefied petroleum gas meter or vehicle tank meter used for commercial weighing or measuring of commodities;

(b) "person" means any individual, agent or employee of a service company, partnership, association, corporation or governmental agency;

(c) "place of business" means any location from which a scale testing and service company, or one or more representatives or employees thereof, sell and perform services for the purpose of testing, repairing, adjusting or calibrating scales;

(d) "technical representative" means an individual who conducts any of the following: Installs, repairs, adjusts, calibrates or certifies the accuracy of, a weighing and measuring device;

(e) "secretary" means the secretary of agriculture or an authorized representative of the secretary;

(f) "service company" means a company which is in the business of any of the following: Installing, examining, calibrating, testing, repairing, adjusting weighing and measuring devices but such term does not include a technical representative unless the technical representative is the owner of such service company;

(g) "vehicle tank meter" means those meters mounted on vehicle tanks used for the measurement and delivery of petroleum products; and

(h) "liquefied petroleum gas" means commercial propane and such commercial butane as is used for heating fuel.

83-302. Scales; service company license required; application; fees; out-of-state places of business; technical representatives, licensure; continuing education seminars; weights tested by secretary; deposit of moneys. (a) Each person, other than an authorized representative of the secretary or an authorized representative of a city or county department of public inspection of weights and measures established pursuant to K.S.A. 83-210, and amendments thereto, desiring to operate and perform testing and other services as a company in Kansas shall apply to the secretary for a service company license, on a form to be supplied by the secretary, and shall obtain such license from the secretary before operating and performing testing or other services as a service company. Each service company shall obtain a license for each place of business maintained in Kansas and shall pay a license application fee of \$50, or commencing July 1, 2002, and ending June 30, 2010, a fee of \$100 and thereafter an annual license renewal application fee of \$50, or commencing July 1, 2002, and ending June 30, 2010, a fee of \$100 for each

place of business. Each service company license shall expire on June 30 following issuance, shall be void unless renewed prior to the expiration and shall not be transferable.

(b) If any service company maintains any out-of-state places of business which the company operates in serving Kansas patrons, the service company seeking to obtain or renew a license under this section shall list in the application such places of business and the firm names under which the company operates at each such place of business. If any out-of-state place of business is established by a service company after being licensed under this section, the licensee shall supply such information to the secretary before any work is performed in Kansas from such out-of-state location. Each nonresident service company shall designate a resident agent upon whom service of notice or process may be made to enforce the provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any liabilities arising from operations thereunder. Each nonresident service company which maintains no established place of business in Kansas shall obtain a license under this section for each out-of-state place of business and shall list on the application the firm name or names for each place of business from which the service company intends to operate.

(c) Each technical representative shall be licensed annually by the secretary. Each technical representative shall be required to attend continuing education seminars on an annual basis as required by rules and regulations adopted by the secretary and to pass a reasonable examination prescribed by the secretary each year prior to being licensed. The Kansas department of agriculture shall be authorized to charge a fee to the attendees of the continuing education seminars sponsored by the agency. The amount charged shall be no more than is necessary to cover the expenses incurred in providing the seminar. Each technical representative's license shall expire on June 30 following the issuance of the license and shall be void unless renewed prior to the expiration.

(d) No service company license may be issued or renewed under this section until the applicant's weights or measures, or both have been tested for accuracy and sealed by the secretary. The secretary is authorized to accept a certification of the accuracy of the applicant's weights or measures issued by the national institute of standards and technology or by a weights and measures laboratory certified by the national institute of standards and technology in lieu of a test by the secretary, if such certificate shows that the weights or measures have been tested within the last 365 days preceding the license application.

(e) The secretary shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the weights and measures fee fund.

83-303. Rules and regulations of secretary of agriculture; access to private premises by secretary. (a) The secretary of agriculture may adopt, amend and revoke reasonable rules and regulations concerning:

- (1) Standards of workmanship for technical representatives and service companies;
- (2) requirements for contractual responsibilities and fulfillment of agreements by service companies;
- (3) maintenance and furnishing of reports and information necessary for the secretary to carry out the provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder; and
- (4) other matters necessary for the administration of the provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder.

(b) For purposes of inspection, the secretary may enter upon private premises during normal business hours so as to inspect a weights and measures device or to inspect the installation, or repair or service reports the owner of the device or the service company is required to keep pursuant to chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or rules and regulations adopted thereunder or to perform any other lawful act as set out in chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or rules and regulations adopted thereunder.

83-304. Annual inspection required; scales not tested and approved, taken out of service; approval and seal of certain test weights or equipment; exemptions; report of results; withdrawal of inaccurate scale from use; notification of secretary; reports required to be kept by service companies; inspection of vapor meters. (a) Except as provided by subsection (e), the owner or operator of a weighing and measuring device which is used commercially shall have such weighing and measuring device tested and inspected at least annually for accuracy. The test shall be conducted by either a licensed technical representative employed by a licensed service company or by an authorized representative of any city or county which has established a department of public inspection of weights and measures pursuant to K.S.A. 83-210, and amendments thereto, or by the secretary, which inspects such weighing and measuring device in accordance with rules and regulations adopted by the secretary. If upon inspection by the secretary or an authorized representative of the secretary, it is found that the weighing and measuring device has not been tested and inspected for accuracy and approved within the preceding 365 days, the secretary or the authorized representative of the secretary shall take the weighing and measuring device out of service pursuant to the provisions of K.S.A. 83-215, and amendments thereto. Except as provided further, the test weights or equipment used by the service company shall have been approved and sealed by the secretary pursuant to K.S.A. 83-214, and amendments thereto, within 365 days preceding the date of the tests. Test weights or equipment which has the nominal capacity of 250 pounds or greater, are housed in a grain elevator or similar structure and are used to test scales in grain elevators or similar facilities shall have been approved and sealed by the secretary pursuant to K.S.A. 83-214, and amendments thereto, within three calendar years preceding the date of the test. Except at the option of the city or county which has an established department of public inspection of weights and measures, tests and inspections shall be at the expense of the owner or operator of the weighing and measuring device. In any city or county which has a department of public inspection which inspects such weighing and measuring device, the test may be conducted by an authorized representative of the city or county weights and measures department. Farmers or ranchers who own and operate a weighing and measuring device used in private treaty transactions are exempt from the annual testing requirements. Volumetric

provers which are stationary or which exceed the testing capacity of the state metrology lab due to engineering design or the capacity of the prover are exempt from the annual testing requirement.

(b) A service company or the city or county department of public inspection of weights and measures or an authorized representative of the secretary which conducts tests pursuant to this section shall, at the time of testing and inspection, promptly furnish to the owner or operator of the weighing and measuring device a report showing the results of the tests and inspection. The city or county department of public inspection of weights and measures and service company reports shall also be sent to the secretary, as required by rules and regulations adopted by the secretary. No report shall be furnished later than 10 days after the test or inspection of the device has occurred.

(c) Subject to the provisions of K.S.A. 83-215, and amendments thereto, the owner or operator of a weighing and measuring device which is found to be out of the tolerances or specifications required by chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder, at the time of testing shall withdraw immediately the weighing and measuring device from further use until the necessary corrections, adjustments or repairs are made and the weighing and measuring device is determined to be accurate by a service company or the city or county department of public inspection of weights and measures or an authorized representative of the secretary. Weighing and measuring devices which have been repaired or serviced shall meet the tolerances and specifications established in chapter 83 of the Kansas Statutes Annotated, and amendments thereto, and those rules and regulations adopted by the secretary prior to being placed or returned to service. The service company or the city or county department of public inspection of weights and measures shall notify the secretary of any weighing and measuring devices which are found not to comply with such tolerances and specifications and are thus inaccurate and cannot be adjusted, repaired or serviced so as to comply with the standards and tolerances established in chapter 83 of the Kansas Statutes Annotated, and amendments thereto. Such notification shall be as required by the secretary, pursuant to rules and regulations. Such notification shall be furnished to the department no later than 10 days after the service company or city or county department of public inspection of weights and measures has found the weighing and measuring device to be in noncompliance with the tolerance and specifications required for such weighing and measuring device. A copy of the report prepared by the service company or city or county department of public inspection of weights and measures or the secretary showing the results of the weighing and measuring device test and the work done to correct any deficiencies shall be filed with the secretary by the service company.

(d) Each service company shall be required to keep at such company's corporate headquarters or at such company's resident agent's office a copy of all reports regarding the installation, repair, calibration and other work the service company or the technical representatives employed by the service company performed on the commercial weighing and measuring devices. Such reports shall be legible and maintained in an accessible manner and for a period of time as established by the secretary pursuant to rules and regulations. The owner or operator of a weighing and measuring device shall also be required to retain copies of all reports regarding the installation, repair or adjustment or any of the aforementioned done to the weighing and measuring device at the site where the measuring and weighing device is used. Such reports shall be legible and maintained in an accessible manner and for a period of time as established by the secretary pursuant to rules and regulations.

(e) The secretary may adopt rules and regulations providing for inspection of vapor meters at intervals less frequently than annually if the secretary determines that annual inspections are not necessary to protect the public interest. In adopting any such rules and regulations, the secretary shall take into consideration the standard for inspections of vapor meters adopted by the national institute of standards and technology of the United States department of commerce.

83-305. Test of scale for accuracy by secretary, when. When the secretary has been notified by a licensed service company, by an authorized representative of the secretary or by a city or county department of public inspection of weights and measures established pursuant to K.S.A. 83-210, and amendments thereto, that a weighing and measuring device does not comply with tolerances and specifications adopted by the secretary, by rule and regulation, then the secretary may test the weighing and measuring device for accuracy after repairs have been made.

83-307. Railroad track scales exempt from act. Chapter 83 of the Kansas Statutes Annotated, and amendments thereto, does not apply to a railway track scale used exclusively for the weighing of commodities on railroad vehicles.

83-308. Grounds for revocation of, suspension of, failure to renew or failure to issue a license. At any time after a hearing in accordance with the provisions of the Kansas administrative procedure act, the secretary may revoke, suspend, decline to renew or decline to issue a service company license or technical representative's license, when the service company or technical representative: (a) Has refused to provide the secretary with reasonably complete and accurate information regarding methods used, materials used or work performed as required by the secretary;

(b) has failed to comply with any provision or requirement of chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder;

(c) has failed to perform work in a manner consistent with the standards set forth in chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any rules and regulations adopted thereunder; or

(d) has committed an unlawful act as established in K.S.A. 83-219, and amendments thereto.

83-311. Penalty for violations. Any person violating or failing to comply with any of the provisions of K.S.A. 83-301 through 83-311 and K.S.A. 83-321 through 83-325, and amendments thereto, or violating or failing to comply with any authorized rules and regulations of the secretary adopted thereunder, shall be deemed guilty of a class A nonperson misdemeanor. Each separate violation shall be a separate misdemeanor.

83-321. Jurisdiction of secretary of agriculture over scales and measuring devices; transfer of powers, duties and functions. (a) All of the powers, duties and functions of the director of the Kansas state grain inspection department with regard to the Kansas grain inspection laws pertaining to the actual inspection of the scales and other weighing and measuring devices specified in chapter 34 of Kansas Statutes Annotated, and amendments thereto, are hereby transferred to and conferred and imposed upon the secretary of agriculture.

(b) The secretary of agriculture shall be the successor in every way to the powers, duties and functions of the director of the Kansas state grain inspection department with regard to the Kansas grain inspection laws pertaining to the actual inspection of the scales and other weighing and measuring devices specified in chapter 34 of Kansas Statutes Annotated, and amendments thereto, and shall be deemed the orders and directives of the secretary of agriculture until revised, amended or nullified pursuant to law.

(c) The secretary of agriculture shall succeed to whatever right, title or interest the director of the Kansas state grain inspection department, with regard to the Kansas grain inspection laws pertaining to the actual inspection of the scales and other weighing and measuring devices specified in chapter 34 of Kansas Statutes Annotated, and amendments thereto, in which the same were vested prior to the effective date of this act. Every act performed in the exercise of such powers, duties and functions by or under the authority of the secretary of agriculture shall be deemed to have the same force and effect as if performed by the director of the Kansas grain inspection department with regard to the Kansas grain inspection laws pertaining to the actual inspection of the scales and other weighing and measuring devices specified in chapter 34 of Kansas Statutes Annotated, and amendments thereto, in which such powers, duties and functions were vested prior to the effective date of this order.

(d) Whenever the director of the Kansas grain inspection department, or words of like effect, with regard to the Kansas grain inspection laws pertaining to the actual inspection of the scales and other weighing and measuring devices specified in chapter 34 of Kansas Statutes Annotated, and amendments thereto, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the secretary of agriculture.

(e) All rules and regulations of the director of the Kansas grain inspection department with regard to the Kansas grain inspection laws pertaining to the actual inspection of the scales and other weighing and measuring devices specified in chapter 34 of Kansas Statutes Annotated, and amendments thereto, in existence on the effective date of this act shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the secretary of agriculture until revised, amended, revoked or nullified pursuant to law.

(f) All orders and directives of the director of the Kansas grain inspection department with regard to the Kansas grain inspection laws pertaining to the actual inspection of the scales and other weighing and measuring devices specified in chapter 34 of Kansas Statutes Annotated, and amendments thereto, in existence on the effective date of this act shall continue to be effective and shall be deemed the orders and directives of the secretary of agriculture until revised, amended or nullified pursuant to law.

(g) The secretary of agriculture shall succeed to whatever right, title or interest the director of the Kansas grain inspection department, with regard to the Kansas grain inspection laws pertaining to the actual inspection of the scales and other weighing and measuring devices specified in chapter 34 of Kansas Statutes Annotated, and amendments thereto, has acquired in any real or personal property in this state, and the secretary shall hold the same for and in the name of the state of Kansas.

(h) On and after the effective date of this act, whenever any statute, contract, deed or other document concerns the power or authority of the director of the Kansas state grain inspection department with regard to the Kansas grain inspection laws pertaining to the actual inspection of the scales and other weighing and measuring devices specified in chapter 34 of Kansas Statutes Annotated, and amendments thereto, to acquire, hold or dispose of real or personal property or any interest therein, the secretary of agriculture shall succeed to such power or authority.

83-322. Same; transfer of officers and employees; retention of benefits and rights; service deemed continuous. On the effective date of this act, officers and employees who immediately prior to such date, were engaged in the performance of powers, duties or functions of the Kansas grain inspection laws pertaining to the actual inspection of the scales and other weighing and measuring devices specified in chapter 34 of Kansas Statutes Annotated, and amendments thereto, and who in the opinion of the secretary of agriculture, are necessary to perform the powers, duties and functions of the Kansas grain inspection laws pertaining to the actual inspection of the scales and other weighing and measuring devices specified in chapter 34 of Kansas Statutes Annotated, and amendments thereto, shall be transferred to and shall become officers and employees of the state department of agriculture. Any such officer or employee shall retain all retirement benefits and all rights of civil service which had accrued to or vested in such officer or employee prior to the effective date of this act. The service of each such officer and employee so transferred shall be deemed to have been continuous.

83-323. Same; resolution of conflicts by governor; succession to property and records. (a) When any conflict arises as to the disposition of any property, power, duty or function, or the unexpended balance of any appropriation, as a result of any abolition, transfer, attachment or change made by or under authority of this act, such conflict shall be resolved by the governor whose decision shall be final.

(b) The state department of agriculture shall succeed to all property rights and records which were used for or pertain to the performance of the powers, duties and functions transferred to the secretary of agriculture. Any conflict as to the proper disposition of property or records arising under this section and resulting from the transfer, attachment or all or part of the powers, duties and functions of the director of the Kansas state grain inspection department shall be determined by the governor whose decision shall be final.

83-324. Same; civil and criminal actions saved. (a) No suit, action or other proceeding, judicial or administrative, lawfully commenced, or which could have been commenced by or against the director of the Kansas state grain inspection department with regard to the Kansas grain inspection laws or by or against any officer of the state in such officer's official capacity or in relation to the discharge of such officer's official duties shall abate by reason of the transfers effected under the provisions of this act. The court may allow any such suit, action or other proceeding to be maintained by or against the secretary of agriculture or any officer affected.

(b) No criminal action commenced or which could have been commenced by the state shall abate by the taking effect of this act.

83-325. Same; transfer of appropriations; assumption of liability for compensation of transferred officers and employees.

(a) On the effective date of this act, the balance of all funds appropriated and reappropriated to the director of the Kansas state grain inspection department, the actual inspection of scales and other weighing and measuring devices with regard to the Kansas grain inspection laws is hereby transferred to the state department of agriculture and shall be used only for the purpose for which the appropriation was originally made.

(b) On the effective date of this act, the liability for all accrued compensation or salaries of officers and employees who, immediately prior to such date were engaged in the performance of powers, duties or functions of any state agency or officer transferred by this act, or which becomes a part of the state department of agriculture or the powers, duties and functions of which are transferred to the secretary of agriculture, shall be assumed and paid by the state department of agriculture.

83-326. Severability clause. If any part of this act are [is] held to be invalid or unconstitutional by any court, it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional part or parts.

Article 4.--DISPENSING DEVICES

83-401. Definitions. As used in K.S.A. 83-401 to 83-410 and 83-501 and K.S.A. 1997 Supp. 55-447, and amendments thereto, inclusive: (a) "Dispensing device" means a motor-vehicle fuel or liquid fuel dispensing pump, meter or other similar measuring device and shall include any device which dispenses refined or blended gasoline or diesel fuel product. This definition shall not include vehicle tank meters or liquefied petroleum meters;

(b) "person" means any individual, agent, technical representative, partnership, association, corporation or governmental agency but does not include the secretary;

(c) "secretary" means the secretary of agriculture, the secretary's authorized representative or the secretary's authorized inspector;

(d) "place of business" means any location from which a testing service, or one or more representatives or employees thereof, sell and perform services for the purpose of testing, repairing, adjusting, measuring or calibrating dispensing devices;

(e) "technical representative" means an individual who is responsible for the proper installation, repair, adjustment or calibration and certification of the accuracy of such dispensing devices; and

(f) "service company" means a company which is in the business of examining, calibrating, testing, repairing and adjusting of dispensing devices but such term does not include a technical representative unless the technical representative is the owner of such service company.

83-402. Service company license required; application; fees; technical representative license; continuing education seminars; weights and measures tested for accuracy; deposit of moneys. (a) Each person, other than an authorized representative of the secretary or an authorized representative of a city or county department of public inspection of weights and measures established pursuant to K.S.A. 83-210, and amendments thereto, desiring to operate and perform testing and other services as a service company in Kansas shall apply to the secretary for a service company license, on a form to be supplied by the secretary, and shall obtain such license from the secretary before operating and performing testing or other services as a service company. Each service company shall obtain a license for each place of business maintained in Kansas and shall pay a license application fee of \$50, or commencing July 1, 2002, and ending June 30, 2010, a fee of \$100 and thereafter an annual license renewal application fee of \$50, or commencing July 1, 2002, and ending June 30, 2010, a fee of \$100 for each place of business. Each service company license shall expire on June 30 following issuance, shall be void unless renewed prior to the expiration and shall not be transferable.

(b) If any service company maintains any out-of-state places of business which the service company operates in serving Kansas patrons, the applicant seeking to obtain or renew a license under this section shall list in the application such places of business and the firm names under which the service company operates at each such place of business. If any out-of-state place of business is established by a service company after being licensed under this section, the licensee shall supply such information to the secretary before any work is performed in Kansas from such out-of-state location. Each nonresident service company shall designate a resident agent upon whom service of notice or process may be made to enforce the provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any liabilities arising from operations thereunder. Each nonresident service company which maintains no established place of business in Kansas shall obtain a license under this section for each out-of-state place of business and shall list on the application the firm name or names for each place of business from which the service company intends to operate.

(c) Each technical representative shall be licensed annually by the secretary. Each technical representative shall be required to attend continuing education seminars on an annual basis as required by rules and regulations adopted by the secretary and to pass a reasonable examination prescribed by the secretary each year prior to being licensed. The Kansas department of agriculture shall be authorized to charge a fee to the attendees of the seminar sponsored by the department. The amount charged shall be no more than is necessary to cover the expenses incurred in providing the seminar. All technical representatives who install, repair, adjust or calibrate a device and certify such devices shall be required to pass the state examination annually. Each technical representative license shall expire on June 30 following issuance of the license and shall be void unless renewed prior to the expiration.

(d) No service company license may be issued or renewed under this section until the applicant's weights and measures have been tested for accuracy and sealed by the secretary. The secretary is authorized to accept a certification of the accuracy of the applicant's weights or measures issued by the national institute of standards and technology, by a weights and measures laboratory certified by the national institute of standards and technology, or by the appropriate certifying agency of another state in lieu of a test by the secretary, if such certificate shows that the weights or measures have been tested within the 12 calendar months next preceding the license application.

(e) The secretary shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the weights and measures fee fund.

83-403. Same; rules and regulations of state board of agriculture; access to private premises by state sealer. (a) The secretary of agriculture with the recommendation of the state sealer may adopt, amend and revoke reasonable rules and regulations concerning:

- (1) Standards of workmanship for testing services;
 - (2) requirements for contractual responsibilities and fulfillment of agreements by testing services;
 - (3) furnishing of reports and information necessary for the state sealer to carry out the provisions of K.S.A. 83-401 to 83-410, inclusive, and amendments thereto; and
 - (4) other matters necessary for the administration of the provisions of K.S.A. 83-401 to 83-410, inclusive.
- (b) For purposes of inspection, the state sealer or authorized representatives of the state sealer may enter upon private premises with consent of the occupant.

83-404. Inspection required; dispensing device not tested and approved taken out of service; exemptions; report of results; withdrawal of inaccurate dispensing device from use; notification of secretary; reports required to be kept by service companies. (a) The owner or operator of a dispensing device which is used for commercial purposes shall have such device tested and inspected at least once within every 18-month period. The test shall be conducted by either an authorized representative of any city or county which has established a department of public inspection of weights and measures pursuant to K.S.A. 83-210, and amendments thereto, or by the secretary, which inspects such dispensing devices in accordance with rules and regulations adopted by the secretary. If upon inspection by the secretary, it is found that the dispensing device has not been tested and inspected for accuracy and approved within the preceding 18 months, the secretary shall take the dispensing device out of service pursuant to the provisions of K.S.A. 83-215, and amendments thereto. The test weights and measures used by the service company shall have been approved and sealed by the secretary pursuant to K.S.A. 83-214, and amendments thereto, every 365 days. Except at the option of the city or county which has an established department of public inspection of weights and measures, annual tests and inspections shall be at the expense of the owner or operator. In any city or county which has a department of public inspection of weights and measures which annually inspects such dispensing devices, the tests may be conducted by an authorized representative of such city or county weights and measures department. Farmers or ranchers who own and operate a dispensing device used in private treaty transactions are exempt from the annual testing requirements.

(b) The city or county department of public inspection of weights and measures or the secretary which conducts tests pursuant to this section, at the time of testing and inspection, shall promptly furnish to the owner or operator a report showing the results of the tests and inspection. Such reports shall also be sent to the secretary, as required by rules and regulations adopted by the secretary, however, no report shall be furnished later than 10 days after the test or inspection of such device has occurred.

(c) Subject to the provisions of K.S.A. 83-215, and amendments thereto, the owner and operator of a dispensing device which is found to be inaccurate at the time of testing shall withdraw immediately the device from further use until the necessary corrections, adjustments or repairs are made and the device is determined to be accurate by a service company or the city or county weights and measures department or an authorized representative of the secretary. The devices which have been repaired or serviced shall meet the tolerances and specifications adopted by the secretary by rules and regulations. The service company or the city or county shall notify the secretary of any devices which are found not to comply with such tolerances and specifications and those which are not able to be serviced or repaired so as to comply with such tolerances and specifications. The service company shall report to the secretary within the time frames and in a manner established in rules and regulations adopted by the secretary of any dispensing device which has been installed, repaired, calibrated or fails to comply with the required tolerances and specifications.

(d) Each service company shall be required to keep at such company's corporate headquarters or at such company's resident agent's office a copy of all reports regarding the installation, repair, calibration and other work the service company or the technical representatives employed by the service company performed on the commercial dispensing devices. Such reports shall be legible and maintained in an accessible manner and for a period of time as established by the secretary pursuant to rules and regulations. The owner or operator of a dispensing device shall also be required to retain copies of all reports regarding installation, repair or adjustment or any of the aforementioned done to the dispensing device at the site where the dispensing device is used. Such

reports shall be legible and maintained in an accessible manner and for a period of time as established by the secretary pursuant to rules and regulations.

83-405. Test of dispensing device for accuracy by secretary, when. When the secretary is notified by a licensed service company, an authorized representative of the secretary or by a city or county department of public inspection of weights and measures established pursuant to K.S.A. 83-210, and amendments thereto, that a dispensing device does not comply with tolerances and specifications adopted by the secretary, by rules and regulations, the secretary may test for accuracy after repairs have been made.

83-407. Grounds for revocation of, suspension of, failure to renew or failure to issue a license. At any time after a hearing held in accordance with the provisions of the Kansas administrative procedure act, the secretary may revoke, suspend, decline to renew or decline to issue a service company license or a technical representative's license, when the service company or technical representative: (a) Has refused to provide the secretary with reasonably complete and accurate information regarding methods used, materials used or work performed;

(b) has failed to comply with any provision or requirement of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any rules and regulations adopted thereunder;

(c) has failed to perform work in a manner consistent with the standards set forth in chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any rules and regulations adopted thereunder; or

(d) has committed an unlawful act pursuant to K.S.A. 83-219, and amendments thereto, or any rules and regulations adopted thereunder.

83-409. Unlawful acts. It is unlawful for any person, other than the secretary or an authorized representative of a city or county department of public inspection of weights and measures established pursuant to K.S.A. 83-210, and amendments thereto, to: (a) Commit any unlawful act pursuant to K.S.A. 83-219, and amendments thereto; or

(b) violate any of the provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any rules and regulations adopted thereunder.

83-410. Penalty for violations. Any person violating or failing to comply with any of the provisions of K.S.A. 83-401 through 83-410, and amendments thereto, or violating or failing to comply with any authorized rules and regulations of the secretary adopted thereunder, shall be deemed guilty of a class A, nonperson misdemeanor. Each separate violation shall be a separate misdemeanor.

83-411. Severability clause. If any part of this act are [is] held to be invalid or unconstitutional by any court, it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional part or parts.

Article 5.--CIVIL PENALTIES

83-501. Civil penalties for violation of chapter 83. (a) In addition to any other penalty provided by law, any person who violates any provision of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any rules and regulations adopted thereunder, may incur a civil penalty imposed under subsection (b) in the amount, fixed by rules and regulations of the secretary of agriculture, of not less than \$100 nor more than \$5,000 for each such violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) In determining the amount of the civil penalty, the following shall be taken into consideration: (1) The extent of harm caused by the violation; (2) the nature and persistence of the violation; (3) the length of time over which the violation occurs; (4) any corrective actions taken; and (5) any and all relevant circumstances.

(c) All civil penalties assessed shall be due and payable within 10 days after written notice of assessment is served on the person, unless a longer period of time is granted by the secretary. If a civil penalty is not paid within the applicable time period, the secretary may file a certified copy of the notice of assessment with the clerk of the district court in the county where the weighing and measuring device or dispensing device is located. The notice of assessment shall be enforced in the same manner as a judgment of the district court.

(d) No civil penalty shall be imposed pursuant to this section except upon the written order of the duly authorized agent of the secretary to the person who committed the violation or to the person whose agent or employee committed the violation. Such order shall state the violation, the penalty to be imposed and the right of the person to appeal to the secretary. Any such person, within 20 days after notification, may make written request to the secretary for a hearing in accordance with the provisions of the Kansas administrative procedure act. The secretary shall affirm, reverse or modify the order and shall specify the reasons therefor.

(e) Any person aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the act for judicial review and civil enforcement of agency actions.

(f) An appeal to the district court or to an appellate court shall not stay the payment of the civil penalty.

(g) Any civil penalty recovered pursuant to the provisions of this section or recovered under the consumer protection act for violations of any provision of K.S.A. 83-219, and amendments thereto, shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the weights and measures fee fund.

83-502. Same. (a) In addition to any other penalty provided by law, any person who violates any provision of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any rules and regulations adopted thereunder, may incur a civil penalty imposed under subsection (b) in the amount, fixed by rules and regulations of the secretary of agriculture, of not less than \$100 nor more than \$5,000 for each such violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) In determining the amount of the civil penalty, the following shall be taken into consideration: (1) The extent of harm caused by the violation; (2) the nature and persistence of the violation; (3) the length of time over which the violation occurs; (4) any corrective actions taken; and (5) any and all relevant circumstances.

(c) All civil penalties assessed shall be due and payable within 10 days after written notice of assessment is served on the person, unless a longer period of time is granted by the secretary. If a civil penalty is not paid within the applicable time period, the secretary may file a certified copy of the notice of assessment with the clerk of the district court in the county where the weighing and measuring device or dispensing device is located. The notice of assessment shall be enforced in the same manner as a judgment of the district court.

(d) No civil penalty shall be imposed pursuant to this section except upon the written order of the duly authorized agent of the secretary to the person who committed the violation or to the person whose agent or employee committed the violation. Such order shall state the violation, the penalty to be imposed and the right of the person to appeal to the secretary. Any such person, within 20 days after notification, may make written request to the secretary for a hearing in accordance with the provisions of the Kansas administrative procedure act. The secretary shall affirm, reverse or modify the order and shall specify the reasons therefor.

(e) Any person aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the act for judicial review and civil enforcement of agency actions.

(f) An appeal to the district court or to an appellate court shall not stay the payment of the civil penalty.

(g) Any civil penalty recovered pursuant to the provisions of this section or recovered under the consumer protection act for violations of any provision of K.S.A. 83-219, and amendments thereto, shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the weights and measures fee fund.

Kansas Administrative Regulations

99-25-1. Adoption by reference, exceptions; availability of copies. (a) Except for the codes pertaining to grain moisture meters, secs. 5.56(a) and 5.56(b), and the use requirements for ticket printers on vehicle-tank meters, sec. 3.31.UR.2, the "specifications, tolerances, and other technical requirements for weighing and measuring devices, as adopted by the 88th national conference on weights and measures 2004," published by the national institute of standards and technology, Washington, D.C., as the 2004 edition of the national institute of standards and technology handbook 44 and issued in November 2003, is hereby adopted by reference and shall apply to commercial, data-gathering, and weighing and measuring devices in the state.

(b) Vehicle-mounted metering systems manufactured on or after January 1, 1995 shall be equipped with a ticket printer. A copy of the ticket issued by the vehicle-mounted metering system shall be given to the customer at the time of delivery or as otherwise specified by the customer.

(c) Copies of the handbook adopted by this regulation or pertinent portions from it shall be available from the office of weights and measures, Kansas department of agriculture, Topeka, Kansas.

99-25-3 Certificate of conformance. (a) No person shall use a weighing or measuring device for commercial purposes within the state of Kansas unless a certificate of conformance has been obtained for the weighing or measuring device before its use for commercial purposes within the state of Kansas.

(b) For the purpose of this regulation, a "certificate of conformance" means a document issued by the national institute of standards and technology, national conference on weights and measures, or other authorized laboratory establishing that the weight or measure or weighing or measuring instrument or device meets the requirements of the national institute of standards and technology handbook 44 as adopted by reference in K.A.R. 99-25-1.

(c) Any certificate of performance issued by the national bureau of standards or other authorized laboratory establishing that the weighing or measuring device meets the requirements of the national bureau of standards handbook 44 as previously adopted by reference in K.A.R. 99-25-1 on and after May 1, 1986 may be accepted in lieu of the certificate of conformance required in subsection (b) of this regulation.

(d) This regulation shall not apply to a weighing or measuring device manufactured and installed in the state before May 1, 1986. This regulation shall not apply to a one-of-a-kind device or type of weighing and measuring device for which there are no weighing and measuring devices that are traceable to a certificate of conformance if the weighing or measuring device complies with the applicable requirements, including permanence, of the national institute of standards and technology handbook 44 as adopted by reference in K.A.R. 99-25-1.

99-25-4 Continuing education requirements for technical representatives. (a) Before the license of a technical representative is issued or renewed by the Kansas department of agriculture, the technical representative shall complete a minimum of four clock-

hours of verifiable continuing education for each category of weighing or measuring devices. The continuing education shall consist of educational seminars regarding the following topics:

- (1) The installation, calibration, or repairing of a weighing or measuring device;
- (2) the applicable state weights and measures laws or regulations;
- (3) the applicable handbooks adopted by reference in these regulations;
- (4) the information required on testing and reporting forms; and
- (5) the proper method for testing weights and measures and weighing and measuring devices.

(b) All training or continuing education not conducted by the Kansas department of agriculture or representatives of the department shall be approved by the secretary before the training or continuing education is applied toward the requirements for continuing education.

99-25-5 Renewal of a technical representative's license. The license of any technical representative may be renewed for a succeeding one-year period if the technical representative pays the fees prescribed by law, completes the renewal application form provided by the secretary, completes successfully the training in approved subjects during the effective period of the technical representative's license, and successfully passes the examination administered by the secretary. The service company shall verify and maintain records to support the verification that each technical representative it employs has satisfactorily completed the training required for renewal.

99-25-6 Notification of nonconforming weighing or measuring device. (a) Each service company shall notify the weights and measures office by telephone, facsimile, mail, or e-mail within 48 hours of any attempt to calibrate, repair, or adjust a measuring or weighing device that cannot be certified as conforming with all applicable tolerances, specifications, and requirements. The notification shall contain the following information:

- (1) The location of the weighing or measuring device;
- (2) the weighing or measuring device's serial number, identification number, or any other identifying number;
- (3) the name of the technical representative or representatives who attempted to calibrate, repair, or adjust the device;
- (4) the date on which the calibration, repair, or adjustment was attempted; and
- (5) a description of the factors that the technical representative determined were preventing the device from being repaired or adjusted in order to meet all applicable tolerances, specifications, and requirements.

(b) If a service company sends in a report by a telephone, facsimile, or e-mail, the service company shall mail a hard copy of the same information to the weights and measures office within seven days of the date of the attempt to repair, adjust, or calibrate the weighing and measuring device.

(c) Each report mailed to the administrator shall be considered timely if it is postmarked by the second business day following the unsuccessful attempt to calibrate, repair, or adjust the weighing and measuring device described in the report.

99-25-7 Reporting requirements. The service company or the city or county department of public inspections of weights and measures shall send a copy of the appropriate report to the weights and measures office within 10 days after a test or inspection in which any of the following devices is found to be within applicable tolerances, standards, and requirements: (a) Large capacity scale;

(b) small capacity scale;

(c) vehicle tank meter; or

(d) LPG meter. Each report shall be submitted on a form obtained from the office of weights and measures, Kansas department of agriculture.

99-25-8 Record retention. Each service company and each owner of a weighing and measuring device shall keep all records as required by K.S.A. 83-304(d) and K.S.A. 83-404(d), respectively, for a period of five years.

99-25-9. Adoption by reference. Except as specified in subsection (c), the following uniform regulations published by the national institute of standards and technology, Washington, D.C., in the 2004 edition of national institute of standards and technology handbook 130 titled "uniform laws and regulations in the areas of legal metrology and engine fuel quality, as adopted by the 88th national conference on weights and measures 2003," and issued in October 2003, are hereby adopted by reference and shall apply to weighing and measuring devices in the state: (a) "Uniform packaging and labeling regulation";

(b) "uniform regulation for the method of sale of commodities"; and

(c) "uniform engine fuels, petroleum products, and automotive lubricants regulation," except for the following sections:

(1) Sec. 2.2, which pertains to diesel fuel. However, this exception to the adoption by reference shall be in effect only through December 31, 2005; and

(2) secs. 3.2.6 and 3.8, which pertain to oxygenates and fuel ethanol.

Copies of the adopted material or the pertinent portions of it shall be available from the office of weights and measures, Kansas department of agriculture, Topeka, Kansas.

99-25-10. Retail dispenser labeling. Each retail dispenser of fuel ethanol shall be labeled with the capital letter "E" followed by the percentage of denatured ethanol, by volume, and ending with the word "ethanol" if the percentage of fuel ethanol, by volume, exceeds 10 percent.

99-26-1 Fees. (a) The following fees and other necessary and incidental expenses incurred shall be charged for requested services rendered by the secretary or the secretary's authorized representative in conjunction with the testing, proving, or evaluation of weights, measures, and devices, at the following rates:

(1) The testing and proving of mass, volume, length, and other standards by the metrology laboratory at the rate of \$50.00 per hour or fraction thereof;

(2) the testing and proving of a grain hopper scale and any weights, measures, and other devices that are used in conjunction with it at the rate of \$50.00 per hour or fraction thereof; and

(3) conducting or assisting with an evaluation for a national conference on weights and measures certificate of conformance at the rate of \$75.00 per hour or fraction thereof.

(b) In addition to the hourly rates specified in subsection (a), expenses incurred by personnel, including meals, lodging, transportation, and mileage to and from their duty station to the point of testing, equipment, and other incidentals, may be charged.

99-27-1 Civil penalty. Civil penalties shall be assessed based on the harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, any corrective action taken, and any and all relevant circumstances. The penalty shall be based on the following chart. After the maximum penalty is assessed for any violation, the next range of penalties may be applied for any repeat offense.

1 = A penalty ranging from \$1,001 to \$5,000 per violation.

2 = A penalty ranging from \$501 to \$1,000.

3 = A penalty ranging from \$100 to \$500 per violation.

Violation	Penalty		
Offering, exposing for sale, or disposing of an incorrect device, when committed by a service company	1		
Offering, exposing for sale, or disposing of an incorrect device for which a stop-use order has been issued, when committed by an individual	1		
Offering, exposing for sale, or disposing of an incorrect device for which a stop-use order has not been issued, when committed by an individual		2	
Using or possessing an incorrect weighing or measuring device after being informed that device is incorrect		2	
Unknowingly using or possessing an incorrect weighing or measuring device			3
Without authorization, breaking or removing any tag, mark, or seal on devices or packages whose retail worth is less than or equal to \$1,000		2	
Without authorization, breaking or removing any tag, mark, or seal on packages whose retail worth is greater than \$1,000	1		
Selling, offering, or exposing for sale less than the represented quantity of any commodity, thing, or service that has a retail value less than or equal to \$500			3
Selling, offering, or exposing for sale, less than the represented quantity of any commodity, thing, or service that has a retail value greater than \$500		2	
Repeatedly selling, offering, or exposing for sale, less than the represented quantity of any commodity, thing, or service that has a retail value less than or equal to \$500		2	
Repeatedly selling, offering, or exposing for sale, less than the represented quantity of any commodity, thing, or service that has a retail value greater than \$500	1		
Unknowingly taking or attempting to take more of the represented quantity of any commodity, thing, or service that has a retail value less than or equal to \$500			3
Unknowingly taking or attempting to take more of the represented quantity of any commodity, thing, or service that		2	

has a retail value greater than \$500			
Repeatedly taking or attempting to take more of the represented quantity of any commodity, thing, or service that has a retail value less than or equal to \$500		2	
Repeatedly taking or attempting to take more of the represented quantity of any commodity, thing, or service that has a retail value greater than \$500	1		
Keeping for the purpose of sale or offering or exposing for sale any commodity that is labeled in a manner contrary to law			3
Using a device that is not positioned so that a customer may view its indications			3
Selling, offering for sale or use, or possessing for the purpose of selling or using any device or instrument to be used or calculated to falsify any weight or measure	1		
Disposing of any rejected weight or measure contrary to law or rules and regulations			3
Exposing or offering for sale commodities that are in misleading packaging			3
Repeatedly and after notification by the division of weights and measures, exposing or offering for sale commodities that are in misleading packaging	1		
Misrepresenting or representing in a manner tending to mislead or deceive an actual or prospective purchaser, the price of an item offered, exposed, or advertised for sale at retail			3
Misrepresenting or representing in a manner calculated to mislead or deceive an actual or prospective purchaser, the price of an item offered, exposed, or advertised for sale at retail	1		
Unknowingly using a device that does not correctly compute total price			3
Knowingly using a device that does not correctly compute total price	1		
Charging or attempting to charge a value that is more than the advertised price for an item or commodity at the time of sale			3
Charging or attempting to charge an incorrect price at the time of sale of an item when more than 24 hours have passed after being informed by the division of weights and measures that the price was incorrect		2	
Altering a weight certificate, or using or attempting to use such a certificate for the purpose of altering a weight or delivery, or both	1		
Hindering or obstructing the secretary or an authorized agent in the performance of official duties	1		
Failing to pay all fees and penalties	1		
Failing to keep all inspection reports		2	
Failing to make available all inspection reports	1		
Failing to have any commercial weight, measure, or weighing and measuring device tested			3
Selling or offering or exposing for sale LPG in packages or containers that are not labeled properly			3
Selling, using, removing or otherwise disposing of, or failing to	1		

remove from the premises specified, any weighing or measuring device or package or commodity contrary to the terms of any order issued by the secretary			
Violating any order issued by the secretary	1		
Acting as or representing such person's self to be a technical representative without having a valid license	1		
Certifying as correct an inaccurate device			3
Certifying as correct an inaccurate device and not following established test procedures		2	
Failing to complete the proper forms in their entirety			3
Filing false reports	1		
Selling a weighing and measuring device that does not have an NTEP certificate of conformance	1		
Failing to notify the secretary within 48 hours of a weighing or measuring device that cannot be approved			3
Offering, selling, or exposing for sale fuel that does not conform to the applicable fuel quality standards			3
Repeatedly offering, selling, or exposing for sale fuel that does not conform to the applicable fuel quality standards		2	
Failing to take proper precautions to prevent the offering, selling, or exposing for sale of fuel that does not conform to the applicable fuel quality standards	1		
Knowingly offering, selling, or exposing for sale fuel that does not conform to the applicable fuel quality standards	1		

99-27-2 Civil penalty; complaint. (a) Each complaint that assesses a civil penalty shall include the following elements:

- (1) A statement reciting each subsection of the act authorizing the assessment of a civil penalty;
- (2) a specific reference to each provision of the act or implementing regulation that the respondent is alleged to have violated;
- (3) a concise statement of the factual basis for each alleged violation;
- (4) the amount of the proposed civil penalty; and
- (5) a notice of the respondent's right to request a hearing on any material fact contained in the complaint or on the appropriateness of the amount of the proposed civil penalty. This notice may be incorporated within the complaint or set forth in a separate document.

(b) Each respondent who requests a hearing shall be served a notice of a prehearing conference in accordance with the Kansas administrative procedure act, K.S.A. 77-501 et seq., and amendments thereto.

99-27-3 Answer to complaint. (a) If a respondent contests any material fact upon which a complaint is based, contends that the amount of the civil penalty proposed in the complaint is inappropriate, or contends that the respondent is entitled to judgment as a matter of law, the respondent may file a written answer to the complaint. If an answer is filed, the answer shall be filed with the designated hearing officer within 20 days after service of the complaint.

(b) If an answer is filed, the respondent's answer shall be in writing and shall address the following topics.

- (1) The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the complaint of which the respondent has any knowledge.
- (2) If the respondent states that the respondent has no knowledge of a particular factual allegation, the allegation shall be deemed denied.
- (3) The answer shall also state any circumstances or arguments that are alleged to constitute grounds for defense, and any facts that the respondent disputes and intends to place at issue.

99-27-4 Informal settlement. (a) The respondent may request a settlement conference. The request may be either contained in the respondent's answer to the complaint, if an answer is filed, or presented at the pre-hearing conference.

(b) If a settlement is reached, the parties shall reduce the settlement to writing and present the proposed written consent agreement to the secretary or the secretary's designee. The consent agreement shall contain these elements:

- (1) A statement in which the respondent admits the jurisdictional allegations of the complaint;
- (2) a statement containing one of the following:
 - (A) The respondent admits the facts stipulated in the consent agreement; or

- (B) the respondent neither admits nor denies specific factual allegations contained in the complaint; and
- (3) a statement that the respondent consents to the assessment of a stated civil penalty, if any is assessed. The consent agreement shall include all terms of the agreement and shall be signed by all parties or their counsel or representatives of record.

99-27-5 Adjusting the amount of the proposed civil penalty. (a) At the settlement conference, each respondent shall present all evidence relating to adjustment of the proposed civil penalty. This evidence may include mitigating factors or new evidence not previously known to the agency at the time the complaint was issued.

(b) If the respondent presents new evidence establishing facts and circumstances that were unknown to the secretary when the complaint was issued, one of the following shall apply:

(1) When the new evidence relates to the gravity of the violation, a new civil penalty may be proposed.

(2) When the new evidence establishes that the respondent did not commit the violation charged, the complaint shall be dismissed.

(3) When the new evidence reveals additional charges that should have been filed, a new complaint containing appropriate additional civil penalties may be filed.

(c) The respondent shall have the burden of presenting evidence of any mitigating factors to support any requested reduction in the amount of the proposed civil penalty. The amount of the civil penalty may be reduced if the reduction serves the public interest.

(d) The amount of a civil penalty shall not be reduced to less than \$100 per offense.

(1) The decision regarding reduction of a proposed civil penalty shall lie solely within the discretion of the secretary or the secretary's designee.

(2) A proposed civil penalty shall not be reduced unless evidence of mitigating factors has been presented by the respondent.

99-30-2 Registration form. Each application for issuance or renewal of a scale testing and service company license shall provide the following information: (a) The name and business address of the applicant;

(b) the name, home address, social security number, and date of birth of all technical representatives who repair, calibrate, adjust, or test scales for the applicant;

(c) the signature and title of the applicant or representative;

(d) the date of submission of the application;

(e) a certification that the applicant is fully qualified to install, service, repair, or recondition scales; and

(f) a certification that the applicant has in possession or available for use sufficient standards and equipment adequate to test scales.

99-30-3 Conformance with handbook 44. Each scale testing and service company shall conduct each test and make each repair to scales in conformance with the requirements of the national institute of standards and technology handbook 44 as adopted by reference in K.A.R. 99-25-1. Copies of this material or the pertinent portions of it shall be available from the office of weights and measures, Kansas department of agriculture, Topeka, Kansas.

99-30-4 Minimum required equipment. Each scale testing and service company shall have at each place of business sufficient standards and equipment to adequately test scales as specified in the notes section of the general code and in the scale code contained in the national institute of standards and technology handbook 44, as adopted by reference in K.A.R. 99-25-1.

99-30-5 Removal of rejection tags. (a) For the purpose of testing or repairing a scale, any licensed scale testing and service company may remove an official rejection tag or other mark placed on a scale by authority of the secretary.

(b) After the test is conducted and necessary repairs are completed, the scale testing and service company shall place the scale in service. If the scale is not repaired properly, the scale testing and service company shall replace the rejection tag or other mark with a substitute rejection tag or other mark supplied by the secretary.

(c) After removing an official rejection tag for the purpose of repairing a scale, the scale testing and service company shall send a completed inspection or test report and the official rejection tag to the weights and measures office within 10 days after the date of removing the official rejection tag. The completed inspection or test report may be submitted by facsimile. The inspection or test report or other attached document shall detail all repairs made, and the testing shall be conducted to ensure that the scale is in compliance with Kansas law and K.A.R. 99-25-1.

(d) Any licensed scale testing and service company may file reports required by this regulation by means of facsimile. If the reports are sent to the weights and measures office by facsimile, the original shall be mailed to the weights and measures office within 10 days after the date of the test or inspection. Notifications mailed to the administrator shall be considered timely if they are postmarked on or before the 10th day following the calibration, repair, or adjustment described in the notification.

(e) This regulation shall apply to new and used scales.

99-30-6 Placed-in-service report. Each scale testing and service company shall submit to the secretary a placed-in-service report, also referred to as the DI-701 report, within 10 days after a scale has been restored to service or placed in service. The placed-in-service report shall be executed in triplicate. The scale testing and service company shall mail to the secretary the original report and each official rejection tag removed from the device. A duplicate copy of the report shall be delivered to the owner or operator of the device. The scale testing and service company shall retain the third copy of the report.

99-31-2 Registration form. Each application for issuance or renewal of a testing service company license shall provide the following information: (a) The name and business address of the applicant;

(b) the name, home address, social security number, and date of birth of all technical representatives who repair, calibrate, adjust, or test dispensing devices for the applicant;

(c) the signature and title of the applicant or representative;

(d) the date of submission of the application;

(e) a certification that the applicant is fully qualified to install, service, repair, or recondition dispensing devices; and

(f) a certification that the applicant has in its possession or available for use sufficient standards and equipment adequate to test dispensing devices.

99-31-3 Conformance with handbook 44. Each testing service company shall conduct each test and make each repair to dispensing devices in conformance with the requirements of the national institute of standards and technology handbook 44 as adopted by reference in K.A.R. 99-25-1. Copies of this material or the pertinent portions of it shall be available from the office of weights and measures, Kansas department of agriculture, Topeka, Kansas.

99-31-4 Minimum required equipment. Each testing service company shall have at each place of business sufficient standards and equipment to adequately test dispensing devices as specified in the notes section of the general code, and in the liquid-measuring device code, vehicle-tank meter code, and LPG liquid-measuring device code contained in the national institute of standards and technology handbook 44, as adopted by reference in K.A.R. 99-25-1.

99-31-5 Removal of rejection tags. (a) For the purpose of testing or repairing a dispensing device, any licensed testing service company may remove an official rejection tag or other mark placed on a dispensing device by authority of the secretary.

(b) After the test is conducted and necessary repairs are completed, the testing service company shall place the dispensing device in service until examination by the secretary. If the dispensing device is not repaired properly, the testing service company shall replace the rejection tag or other mark with a substitute rejection tag or other mark supplied by the secretary.

(c) After removing an official rejection tag for the purpose of repairing a device, the service company shall send a completed inspection or test report and the official rejection tag to the weights and measures office within 10 days from the date of removing the official rejection tag. The completed inspection or test report may be submitted by means of facsimile. The inspection or test report or other attached document shall detail all repairs made, and the testing shall be conducted to ensure that the device is in compliance with Kansas law and K.A.R. 99-25-1.

(d) Any licensed testing service company may file notifications or reports required by this regulation by means of facsimile. Notifications or reports mailed to the administrator shall be considered timely if they are postmarked on or before the 10th day following the calibration, repair, or adjustment described in the notification or report.

(e) This regulation shall apply to new and used dispensing devices.

99-31-6 Placed-in-service report. Each testing service company shall submit to the secretary a placed-in-service report, also referred to as the DI-701 report, within 10 days after a dispensing device has been restored to service or placed in service. The placed-in-service report shall be executed in triplicate. The testing service company shall mail to the secretary the original of the properly executed report, together with any official rejection tag removed from the device. A duplicate copy of the report shall be delivered to the owner or operator of the dispensing device while the third copy of the report shall be retained by the testing service company.

99-40-3 Invoice disclosure requirements for wholesalers and distributors of gasoline. (a) Each distributor or wholesaler of gasoline shall provide the following information to the purchaser at the time of delivery:

(1) The minimum octane of the product as determined by the $(R + M)/2$ method;

(2) for diesel fuel, the grade, minimum flash point, and American petroleum institute gravity of the product;

(3) the terminal of origin of the product;

(4) the destination of the product;

(5) the name of the wholesaler, if different from the distributor or point of origin; and

(6) the quantity of each type of product delivered.

(b) The information required in subsection (a) shall be provided to the purchaser in writing.

(c) For the purposes of this regulation, the term purchaser means a wholesaler, distributor, or retailer.